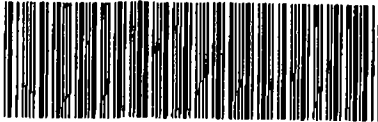


CERTIFIED COPY

07-2-12633-9 28453866 ANAFDF 10-18-07

FILED
IN COUNTY CLERK'S OFFICE

A.M. OCT 17 2007 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTYJudge D. Gary Steiner
Department 10**STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT**

DOUGLAS TOBIN,

NO. 07-2-12633-9

Plaintiff,

**ANSWER AND AFFIRMATIVE
DEFENSES OF DEFENDANT STATE
OF WASHINGTON**

v.

STATE OF WASHINGTON and
PIERCE COUNTY,

Defendants.

COMES NOW the defendant State of Washington in answer to plaintiff's complaint entitled Claim For Damages Pursuant RCW 4.92.020 and 42 U.S.C. 1983, admits, denies, and alleges as follows:

A. IDENTITY OF PARTY

Defendant State of Washington admits that the plaintiff Douglas John Martin Tobin made a Claim against the State of Washington. Defendant State of Washington is without sufficient information to admit or deny the additional allegations in paragraph A.

ANSWER AND AFFIRMATIVE
DEFENSES OF DEFENDANT STATE
OF WASHINGTON

1

 Exhibit A-2
 Page 41

ATTORNEY GENERAL OF WASHINGTON
 Torts Division
 7141 Cleanwater Drive SW
 PO Box 40126
 Olympia, WA 98504-0126
 (360) 586-6300

1 **B. JURISDICTION AND VENUE**

2 The defendant State of Washington admits the allegations in paragraph B. that the
3 County of Pierce and the State of Washington are named as defendants, but denies the
4 remaining allegations contained therein.
5

6 **C. BACKGROUND FACTS**

7 The defendant State of Washington admits that the defendants State of Washington and
8 Pierce County entered into an agreement with plaintiff to return a small portion of the personal
9 property that was seized during the course of plaintiff's arrest that took place on March 18,
10 2002. The defendant State of Washington denies the remaining allegations contained in
11 paragraph C. of plaintiff's complaint.
12

13 **D. CLAIMS AND CAUSE OF ACTION**

14 **A. PLAINTIFF**

15 1) The defendant State of Washington admits the allegations in paragraph D., A(1) that
16 plaintiff Douglas John Martin Tobin resides in the State of Washington at the Shelton
17 Correction Center in Shelton, Washington. The defendant State of Washington denies the
18 remaining allegations contained in paragraph D., A(1).
19

20 **B. DEFENDANTS**

21 2) The defendant State of Washington admits the allegations in paragraph D., B(2) that the
22 defendant State of Washington through defendant Pierce County entered into a written
23 agreement with plaintiff to return certain items of personal property that were of minimum
24
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1 value and were not needed either as evidence in the criminal prosecutions against plaintiff and
2 all other property seized was subject to forfeiture pursuant to RCW 9A.82.060, and .120.

3 3) Defendant State of Washington admits the allegation in paragraph D., B(3).

4 4) Defendant State of Washington denies the allegations contained in paragraph D., B(4).

5 Defendant State of Washington alleges affirmatively that plaintiff in 2002 was charged by the
6 Pierce County Prosecuting Attorney with 10 counts of first degree trafficking in stolen
7 property, 27 counts of first degree theft, and one count of first degree conspiracy to commit
8 theft. These charges arose out of an illegal harvest and sale of geoducks from January to
9 March of 2002. Soon thereafter, plaintiff was charged by second amended information with 33
10 counts of first degree violation of commercial area or time, 33 counts of unlawful trafficking in
11 fish or wildlife, one count of first degree engaging in fish stealing activity unlicensed, one
12 count of first degree commercial fishing without a license, and 33 counts of failure to report
13 commercial fish, shellfish harvest or delivery. These charges concerned the illegal harvest and
14 sale of crab from June 1, 2000 to February 5, 2002. Plaintiff agreed to plead guilty to one
15 count of first degree theft in the geoduck case. Plaintiff also plead guilty to reduced charges in
16 the crab case. In exchange the State of Washington dropped 38 remaining charges and advised
17 plaintiff it would request an exceptional sentence, require that plaintiff forfeit all property
18 seized at the time of his arrest, seek over \$1,200,000.00 in restitution in the geoduck case, and
19 \$300,000.00 in restitution in the crab case.
20
21
22

23 5) The defendant State of Washington admits the allegations contained in paragraph D.,
24 B(5) that items of plaintiff's personal property was seized on March 18, 2002 as part of the
25 criminal arrest, but denies the remaining allegations contained therein.
26

1 6) The defendant State of Washington denies the allegations contained in paragraph D.,
2 B(6).

3 7) The defendant State of Washington admits the allegations in paragraph D., B(7) that by
4 agreement following entry of the guilty pleas referred to in paragraph 4 herein that plaintiff
5 was granted return of certain items of personal property which was seized at the time of his
6 arrest to the extent that the personal property was not seized as evidence in the criminal
7 prosecution and was of minimal value and would not subject to forfeiture. All other property
8 seized was voluntarily forfeited by plaintiff.
9

10 8) The defendant State of Washington denies the allegations contained in paragraph D.,
11 B(8).

12 9) The defendant State of Washington denies the allegations contained in paragraph D.,
13 B(9).

14 10) The defendant State of Washington denies the allegations contained in paragraph D.,
15 B(10).

16 11) The defendant State of Washington denies the allegations contained in paragraph D.,
17 B(11).
18

19
20 **E. DAMAGES SOUGHT**

21 Defendant State of Washington denies the allegations in paragraph E. in its entirety.
22

23 **F. RELIEF SOUGHT**

24 Defendant State of Washington denies the allegations contained in paragraph F.
25
26

1 By Way of FURTHER ANSWER and FIRST AFFIRMATIVE DEFENSE defendant
2 State of Washington alleges as follows:

3 To the extent any contract was entered between plaintiff and the defendants State of
4 Washington through Pierce County concerning the return of personal property, any such
5 agreement has been satisfied in full and said claim is subject to dismissal based upon accord
6 and satisfaction, waiver, and/or equitable estoppel.
7

8 By Way of FURTHER ANSWER and SECOND AFFIRMATIVE DEFENSE
9 defendant State of Washington alleges that plaintiff's complaint fails to state a cause of action
10 upon which relief can be granted.

11 By Way of FURTHER ANSWER and THIRD AFFIRMATIVE DEFENSE defendant
12 State of Washington alleges that the damages and/or injuries sustained, if any, were
13 proximately caused by the acts or omissions, both intentional and negligent, of third persons
14 over whom defendant had no right of control whatsoever, including plaintiff's daughter, Stacy
15 Tobin, who was designated by plaintiff to receive personal property being returned to him
16 pursuant to agreement with the defendants, and defendant Pierce County.
17

18 By Way of FURTHER ANSWER and FOURTH AFFIRMATIVE DEFENSE
19 defendant State of Washington alleges that the damages and/or injuries sustained, if any were
20 proximately caused by the fault of plaintiff as defined by RCW 4.22.015.
21

22 By Way of FURTHER ANSWER and FIFTH AFFIRMATIVE DEFENSE defendant
23 State of Washington alleges that if plaintiff suffered any damages, recovery is barred by
24 collateral estoppel, res judicata and lack of subject matter jurisdiction.
25
26

1 By Way of FURTHER ANSWER and SIXTH AFFIRMATIVE DEFENSE defendant
2 State of Washington alleges that defendant at all times acted in good faith in the performance
3 of their duties and are therefore immune from suit for the matters charged in plaintiff's
4 complaint.

5
6 By Way of FURTHER ANSWER and SEVENTH AFFIRMATIVE DEFENSE
7 defendant State of Washington alleges that if plaintiff suffered any damages, recovery, is barred
8 by plaintiff's failure to mitigate said damages.

9 By Way of FURTHER ANSWER and EIGHTH AFFIRMATIVE DEFENSE defendant
10 State of Washington alleges that any employees of defendant State of Washington are subject
11 to qualified immunity.

12 By Way of FURTHER ANSWER and NINTH AFFIRMATIVE DEFENSE defendant
13 State of Washington alleges that any recovery by plaintiff is barred by reason of laches.

14 By Way of FURTHER ANSWER and TENTH AFFIRMATIVE DEFENSE defendant
15 State of Washington alleges that plaintiff's claims are barred by the statute of limitations.

16 By Way of FURTHER ANSWER and ELEVENTH AFFIRMATIVE DEFENSE
17 defendant State of Washington alleges that defendant State of Washington is immune from suit
18 for the matters charged in plaintiff's complaint.


19 Defendant State of Washington reserves the right to conduct further discovery and
20 amend its answer to include new additional defenses disclosed during the course of discovery.

21 WHEREFORE defendant State of Washington prays that plaintiff's complaint be
22 dismissed with prejudice and that plaintiff takes nothing further by their complaint, and that the
23
24
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1 defendant State of Washington be allowed its costs and reasonable attorney's fees incurred in
 2 the defense of this action.

3 DATED this 16 day of October, 2007.

5 ROBERT M. MCKENNA
 6 Attorney General

7 
 8 PATRICIA FETTERLY, WSBA No. 8425
 9 Assistant Attorney General

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 20
 21 STATE OF WASHINGTON, County of Pierce
 22 ss: I, Kevin Stock, Clerk of the above
 23 entitled Court, do hereby certify that this
 24 foregoing instrument is a true and correct
 25 copy of the original now on file in my office.
 26 IN WITNESS WHEREOF, I hereunto set my
 hand and the Seal of said Court this
 day of FEB 12, 2009
 By Kevin Stock Deputy

ANSWER AND AFFIRMATIVE
 DEFENSES OF DEFENDANT STATE
 OF WASHINGTON

7

ATTORNEY GENERAL OF WASHINGTON
 Torts Division
 7141 Cleanwater Drive SW
 PO Box 40126
 Olympia, WA 98504-0126
 (360) 586-6300

PROOF OF SERVICE

I certify that I caused to be served a copy of this document on all parties or their counsel of record on the date below as follows:

☒ US Mail Postage Prepaid via Consolidated Mail Service

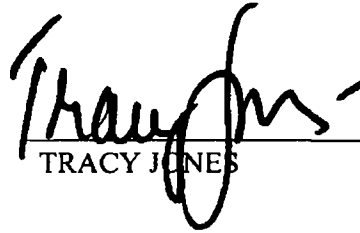
☐ ABC/Legal Messenger

☐ State Campus Delivery

☐ Hand delivered by _____

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 16 day of October, 2007, at Tumwater, WA.


TRACY JONES